

DEFENSE SECURITY COOPERATION AGENCY



GUIDELINES FOR FOREIGN MILITARY FINANCING OF DIRECT COMMERCIAL CONTRACTS

January 2005

Overview

In 1984 the U.S. Department of Defense (DoD) established guidelines for the processing and review of commercial contracts for direct purchase of U.S. defense articles and services from U.S. firms to be financed with funds appropriated by the Congress. These revised guidelines supersede the guidelines dated August 2001.

Direct commercial contracts (DCCs) are contracts to which the U.S. Government (USG) is not a party. Foreign governments enter into contract directly with U.S. companies. Foreign Military Financing (FMF) may be used to fund DCCs, when approved on a case-by-case basis by the Defense Security Cooperation Agency (DSCA), for the purchase of defense articles, defense services, and design and construction services. However, as indicated in the financing agreement to which the USG and the foreign governments are parties, the USG is under no obligation to approve any specific DCC for FMF funding.

The financing of DCCs comes under the review and scrutiny of the General Accounting Office, the DoD Inspector General, the Department of Justice, and the Congress. Revisions of the guidelines, over time, reflect DoD's effort to minimize vulnerability to waste, fraud, and abuse, and where possible, maximize application of acquisition streamlining and reform principles.

The Security Assistance Management Manual (SAMM), DoD 5105.38-M and the following guidelines explain DoD's policies and procedures for the use of FMF of DCCs between U.S. industry and foreign countries:

Contractor Eligibility

1. The prime contractor must be a U.S. supplier or manufacturer, incorporated or licensed to do business in the United States.

2. Purchase agreements should be made directly with the manufacturer of the defense article or service, if possible. The contractor is expected to add value to the product being sold.

- A. Purchases of materiel should be made, to the maximum extent feasible, from the prime manufacturer, or assembler, or from a U.S.-based distributor of a manufacturer or assembler pursuant to a long-standing contractual or licensed relationship.

- B. The prime contractor must demonstrate to the DSCA (through completion of a DoD preaward survey or other means) its capability--including, e.g., expertise, experience, plant, and financial soundness--to perform by itself a substantial portion of the work. Prior successful completion of recent direct commercial contracts financed with FMF funds or DoD contracts for the same or essentially similar items shall normally satisfy this requirement.

C. When applicable, purchasing countries should insure that the items purchased demonstrate interoperability to enhance U.S. and allied nation compatibility and standardization.

D. Funding with FMF will not be considered for a procurement agent, broker, import-export firm or other intermediary unless justified by factors relating to specific country needs and the country's abilities to conduct commercial contracting. A request for exception will be considered if sufficient justification is provided by the purchasing country as to why the purchase is sought from a firm other than the manufacturer.

E. Prime Contractors are required to insure that all first and second tier suppliers and subcontractors are not excluded from federal programs (see paragraph 25). Prime contractors will maintain a list showing the names and addresses and materials/services procured of all first and second tier suppliers and subcontractors applicable to the DCC. The prime contractor must provide this list to DSCA on request.

Standard/Nonstandard Items

3. DCCs are intended for procurement of non-standard items, e.g., items that do not have a national stock number (NSN) and are not regularly procured through the U.S. supply system. Modified NSN items (items that have been altered from their normal/original NSN configuration) may not be procured under DCCs. The purchasing country must demonstrate items are non-standard by providing catalog data or information received from the U.S. military department (MilDeps) or DoD components that the item cannot be procured through the U.S. supply system.

4. DCCs normally will not be permitted for items that are standard to DoD, e.g., items that have NSNs. However, the purchasing country may request exceptions from DSCA for the commercial procurement of standard DoD items. When doing so, the purchasing country must provide written justification to DSCA supporting its request. The justification should include the item description, required delivery date, and any other information that may be pertinent to the exception decision. In those instances where additional information regarding availability, performance, characteristics, releasability, etc. is required, DSCA will consult with the appropriate MilDep or DoD component.

A. Purchaser representatives should allow approximately 45 days for DSCA to process an exception request and provide a written decision.

B. If DSCA has approved use of the DCC channel to meet the requirement, the Purchaser may then submit a contract to DSCA for consideration of FMF. When the contract is submitted for review, the Purchaser must attach the exception letter (see Enclosure 1).

5. The use of FMF for DCCs is permissible for the development and/or procurement of articles and services in support of major country-unique programs. The Purchaser should consult with DSCA and receive approval prior to proceeding with contract negotiations on major unique systems. Written justification supporting the Purchaser's request to use FMF for a DCC should be provided to DSCA as far in advance as possible, but not less than 45 days before solicitation

of offers or initiation of contract negotiations. This will allow sufficient time to evaluate the proposed acquisition and, if necessary, consult with the appropriate MilDep or DoD component. If justification is not provided to the DSCA prior to submission of a contract, processing of the request for funding approval may be delayed or the contract may be returned without review.

U.S. and Non-U.S. Content

6. In order for a contract to be approved for FMF funding, the defense articles and services purchased must be manufactured and assembled in the United States, purchased from U.S. manufacturers or suppliers, and composed of U.S.-origin materiel, components, goods, and services (hereafter “content”). Contractors must maintain and provide, if requested, supporting documentation for the value of both U.S. and non-U.S. origin content. In the event the purchase of a U.S. end item consists of both U.S. and non-U.S. origin content, only the value of the U.S. origin content will normally be financed.

A. An exception for FMF may be considered for items originally manufactured in the U.S. and purchased by a U.S. contractor from foreign sources.

B. An exception for FMF may be considered for Non-U.S. content that is an integral part of end items manufactured and assembled in the United States when the USG has procured or is procuring the same item from the same source. To allow this exception DSCA requires, as a minimum, identification of the foreign content item, its value, and the corresponding USG contract number.

C. An exception for FMF may be considered for non-U.S. content that is an integral part of commercially available off-the-shelf (COTS) items. A COTS item is a commercial item sold in substantial quantities in the commercial marketplace and offered to the U.S. Government without modification and in the same form in which it is sold in the commercial marketplace (see 41 USC 431). COTS does not include bulk cargo such as agricultural products and petroleum products. A COTS item may be eligible for FMF if it is manufactured and assembled in the United States by a U.S. company and is composed of at least 51% U.S. origin content. To allow this exception DSCA requires, as a minimum, a detailed description of the COTS items and information about sales in the commercial marketplace. DSCA may require additional information to ensure that an item is COTS.

D. Contracts must specify all non-U.S. origin content. If not identified in the contract, non-U.S. content must be identified to DSCA by the Purchaser in supporting documents. To facilitate this:

(1) The contractor is required to identify to the Purchaser any non-U.S. content, the corresponding value contained in the contract, and where applicable, supporting documentation to demonstrate that the USG has procured or is procuring the same non-U.S. origin items, components, or services from the same source. Supporting documentation should include the USG contract number(s) under which the non-U.S. content was purchased, if appropriate, and any other pertinent information.

(2) If raw materials, components, or items used in the manufacturing process are procured from both U.S. and foreign sources, and are not segregated as to origin, and

are incorporated on an interchangeable basis into the contractor's products, the actual dollar value need not be identified. Instead, a non-U.S. content estimating methodology or system (for example, an annual survey) may be used by the contractor. The use of such a methodology must be approved by DSCA prior to DSCA processing the contract.

E. Any license fee to be paid by the contractor to a non-U.S. entity should be identified as non-U.S. content.

F. Expenses incurred by foreign subsidiaries of U.S. companies are not considered to be U.S. content. Reasonable expenses for support of U.S. contractor personnel in the foreign country are considered U.S. content and may be FMF-funded.

G. Profit earned and G&A expenses incurred, if any, by U.S. companies are considered to be U.S. content and elements of the Purchase Agreement Price.

Contract Dollar Threshold

7. Contracts for less than \$100,000 will not normally be approved for FMF¹. All amendments and modifications to commercial contracts funded with FMF, including no cost amendments that do not change contract scope, must be submitted to DSCA for review and approval. Changes / amendments should be submitted in chronological order and numbered accordingly.

A. Any contract change that adds, deletes, or substitutes previously contracted items must be accomplished through contract amendment. If the contractor has previously received payment for the items deleted and not replaced, the contractor will be required to refund the amount of these payments. In any event, the contract price will be reduced accordingly.

B. Contract changes requiring additional FMF will not normally be funded later than five years from the date DSCA approved financing of the basic contract. A request for exception may be approved if the Purchaser provides sufficient justification to DSCA.

Competition Requirements

8. It is highly recommended that the Purchaser contact several U.S. companies or firms for solicitation of offers to meet their specific needs. All contracts awarded on a competitive basis will require the Purchaser to identify, in writing, the various contractors solicited and the prices submitted. If the lowest offeror was not selected, the Purchaser must provide a written explanation of the basis for the contract award. If this information is not provided, the contract will be returned to the Purchaser for inclusion of such data.

Contract Processing

¹ Contracts for the Government of Israel less than \$30,000 will not normally be approved for FMF.

9. Contractors and country representatives should plan for the time required by DoD to perform the processing necessary to determine the extent of FMF funding authorization. The processing time for contracts that are fully in compliance with these guidelines is approximately 30 calendar days. The purchasing country is responsible for providing copies of the DSCA Guidelines and the Contractor's Certification to the contractor. If the contract is submitted without the required certification, the contract will be returned to the Purchaser for inclusion of such data. When the prospective purchase is from a contractor that does not regularly sell to the U.S. Government, the Purchaser should set a commencement date for the contract that allows at least an additional 45 days for the U.S. Government to conduct a preaward survey.

Contract Financing

10. The contracts or purchase orders must clearly identify the amount of any contract financing payments and be in accordance with the following limitations:

A. The purchasing country is responsible for demonstrating the reasonableness and security of contract financing arrangements.

B. Advance payments for FMF-funded DCCs made before performance of work under the contract shall not exceed 15 percent of the contract price. The purchasing country shall obtain adequate security for such payments in accordance with paragraph F below.

C. Contract financing arrangements may provide for payments to be made on the basis of accomplishment of specific milestones detailed in the contract, or other basis such as installments. Installments shall be payable no more frequently than quarterly.

D. Cumulative contract financing shall not exceed 85 percent of the contract price of undelivered items. See F below for security requirements.

E. Full contract payment shall not be made until after complete performance of the contract.

F. All unliquidated advance and interim financing payments made by the U.S. Government shall be secured by guarantee documents, such as Letters of Guarantee, Letters of Credit, or Performance Bonds (see paragraph 17). The security shall be at least equal to the amount of the unliquidated contract financing. Contracts lacking adequate provisions to ensure prompt payment directly to the U.S. Government will not be accepted.

G. Purchasing countries may not assess charges to United States contractors for processing contracts or invoices for payment. FMF will be withdrawn if such charges are determined to have been assessed or if the purchasing country representatives have solicited U.S. contractors to provide free materiel, services, advertising, or other similar forms of benefits as a condition of award of a contract or processing of invoices.

H. After validation of invoices, the purchasing country should submit them within 30 calendar days of receipt from the contractor to Defense Finance and Accounting Service (DFAS-ADYMA) Denver for payment.

Essential Elements of Contract

11. The Purchaser must submit complete copies of all contracts and contract provisions to DSCA for FMF funding review. The Purchaser must also submit all subsequent modifications, amendments, side letters, or supplementary agreements that affect the contractual relationship between the Purchaser and the contractor.

A. Contracts should include, as a minimum, all essential contract elements outlined below:

- (1) Country.
- (2) Complete identification of U.S. Contractor to include name, address, and telephone number.
- (3) Contract number.
- (4) Complete nomenclature of defense articles and description of services to be provided.
- (5) Complete description of quantities and prices.
- (6) Complete description of financial arrangements:
 - Unit prices
 - Advance payment
 - Payment schedule (to include method of liquidating advance payment based on deliveries)
- (7) Contract clauses for contract audit.
- (8) Identification of shipment terms.
- (9) Guarantee Documents (see paragraph 17). Identification of any guarantee documents or clauses that could result in a refund to the Purchaser, such as but not limited to:
 - Advance payment guarantee documents
 - Interim payment guarantee documents
 - Liquidated damages
- (10) Acceptance (signature) by both parties.

B. In addition to the contract, the following supporting documentation must be provided to DSCA for FMF funding approval:

- (1) Identification of all non-U.S. origin content.
- (2) Identification of offsets.
- (3) Contractor's Certification and Agreement with DSCA with original signatures.
- (4) List of offerors and prices submitted on competitive procurements.
- (5) Justification for selection of other than the lowest offeror on competitive contracts.
- (6) Copy of country request for exception to use a direct commercial contract (if applicable e.g. to purchase an NSN item).

Contractor Disclosures & Certifications and Export Documentation

12. DSCA requires contractors to make disclosures and execute the *Contractor's Certification and Agreement with Defense Security Cooperation Agency (DSCA)*, in the proposal and the contracting process. Full and accurate disclosures and certifications are prerequisites for DSCA approval of FMF funding. Export Licenses documentation must be provided to “DSCA-MEAN-DCC” and “DFAS-ADYMA Denver” before FMF payments can be made.

A. For contracts valued at \$100,000 or more, the Contractor’s Certification and Agreement must be signed by the contractor and submitted by the Purchaser to the DSCA when the contract is provided for funding review. The date of the current Certification is January 2005. The certification submitted to DSCA should have original signatures of company officials other than those who signed the contract or purchase order.

B. Contractors who execute many DCCs for identical items or categories of items with the same country may request DSCA approve an annual contractor’s certification and agreement. To do so, contractors must demonstrate that their particular business operations promote the use of an annual Certification and that they have a sound estimating methodology to provide the information required by the certification.

C. Contractors must provide copies of any or all export licenses related to the Purchase Agreement (or alternatively, written documentation that certifies that an export license is not required) to “DFAS-ADYMA Denver” and “DSCA-MEAN-DCC.”

Offset Provisions

13. Requesting FMF funding for contracts containing offset provisions as a condition for securing the purchase is not encouraged. FMF grants (nonrepayable FMF funds) may not be used to pay for any offsets, to include direct and indirect offsets, or the related costs of offset implementation. Offsets are compensation practices required as a condition of purchase. Direct offsets are contractual arrangements that involve articles and services being financed under the contract. An indirect offset is any other offset arrangement. If the direct commercial contract is wholly financed with repayable FMF credit or a mix of repayable FMF credit and foreign Purchaser funds, offset costs may be included in the contract funding. However, if any nonrepayable FMF funds are used to fund a DCC, offset costs may only be paid if they are paid in full by repayable FMF credit or foreign Purchaser's national funds. The amount of offset costs included in such contracts must be disclosed to the USG.

Commissions or Contingent Fees

14. Commissions or contingent fees related to the sale must be disclosed by the contractor during contract negotiations and to DSCA at the time the contract is presented for funding approval. The contractor shall maintain documents and records to demonstrate that commissions or contingent fees are not funded by the USG.

Commissions or contingent fees for the purpose of securing the purchase agreement may not be included in the price of an FMF funded contract, unless such payments have been identified and approved in writing by the Purchaser prior to contract award for payment in full with repayable FMF credit or foreign Purchaser's national funds².

Personnel Travel

15. FMF will not be approved for payments for travel, per diem, accommodations, lodging, car rental, personal expenses, entertainment, or other similar expenses incurred by or for purchasing country personnel that relate directly or indirectly in any way with a direct commercial contract or purchase agreement. The reasonable cost of business meals is an allowable cost that may be incurred by the contractor.

Contracts with Transportation Requirements

16. The use of FMF will only be approved for the financing of transportation performed by U.S. carriers. Any waivers (general, security, or non-availability) will be in accordance with the country's agreement with DSCA. The waivers are described in the agreements and may apply to either specific shipments or for a specific period of financing. Contractors will include these requirements in subcontracts or purchase orders applicable to this contract.

A. For ocean transportation of FMF shipments, the contractor and the Purchaser will use, or cause to be used, privately owned U.S. flag commercial vessels. For contractor-originated ocean shipments, the contractor will, within 20 days of loading, submit one legible copy of the rated on-board ocean bill of lading for each shipment to: Chief, Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, 400-7th Street, S.W., Washington, DC 20590. The bill of lading will identify: contract number; name of vessel; flag of registry; date and port of loading; port of final discharge; description, weight, and value of cargo; and total ocean freight revenue.

B. No payments will be made to freight forwarders with FMF unless, prior to July 1, 1994, DSCA had authorized the purchasing country to use FMF-funded DCCs to procure freight forwarding services. Rated, on-board bills of lading or rated airway bills may be approved for direct payments to U.S. ocean or air carriers upon request.

Letters of Credit / Guarantee

17. FMF will not be approved for financing of commercial letters of credit or other guarantees which assure payment to the prime contractor or subcontractor. FMF funding may be approved if the contract requires letters of credit, performance bonds, or other forms of performance guarantees from the prime contractor; they must be issued by a bank or financial institution

² Neither Egypt nor Israel receives repayable FMF funds and the U.S. Congress has not currently appropriated repayable FMF funds to any other country.

licensed in and doing business in the United States. In addition, letters of credit, performance bonds, or other forms of performance guarantees must be identified as a separate line item or clause within the contract that states: "All letters of credit, performance bonds, or other guarantees required by the purchasing country **must** provide for payment directly to the U.S. Government". (See para. 18).

A. Only federally insured financial institutions rated investment grade or higher shall issue or confirm an irrevocable letter of credit (ILC). Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

B. DFAS will not disperse payments to contractors until it receives copies of all letters of credit, bonding or guarantee documents applicable to the purchase agreement. Copies must also be sent to DSCA-MEAN-DCC.

Refunds, Penalties, Liquidated Damages, Performance Bonds, Remittances

18. Any purchase agreement that provides for a refund, penalty, liquidated damages, bonding provisions, or any other form of financial reimbursement to the purchasing country must be structured to ensure that such payment is made by the contractor or designated agent (including the contractor's commercial bank) directly and without undue delay, from the payor to the U.S. Government.

A. Should the Purchaser determine a draw on a letter of credit is required, it must first notify DSCA-MEAN-DCC and the contractor in writing stating the exact reasons necessitating the draw down and the amount at least 15 calendar days prior to the draw down. It is the Purchaser's responsibility to ensure funds are transferred directly from the payor to the U.S. Government.

B. Bonding and guarantee documents, such as Performance Bonds, Letters of Guarantee, Letters of Credit, and any other such instrument that is established by the contractor or his agent pursuant to the Purchase Agreement, must be sent to the DFAS Denver and DSCA-MEAN-DCC and made part of the Purchase Agreement file. This is a prerequisite to disbursement of FMF funds to the contractor. Bonding and guarantee documents lacking adequate provisions to ensure prompt payment to the U.S. Government will not be accepted, and payments for the Purchase Agreement will not be made until this requirement is satisfied.

C. Reimbursement payments must be remitted to the addresses noted below. These payments, when received by the DFAS Denver, will be credited to the purchasing country's FMS trust fund account. Any reimbursement equal to or less than the FMF funds paid by the DSCA on the Purchase Agreement may be applied to any FMS or commercial case approved for FMF. If a reimbursement exceeds the amount of FMF funds paid by the DSCA, the excess amount of may be applied as "cash" to any FMS case.

D. Remittances should be processed as follows:

(1) Payments by check must be accompanied by a letter, which identifies the purchasing country and the DSCA case identifier. The check must be made payable to the "United States Treasury" and mailed to:

DFAS-DE/ADYMA
6760 E. Irvington Place
Denver, CO 80279-2000

Phone: (303) 676-6667

(2) Payments by wire transfer should be transferred as follows:

United States Treasury
New York, New York
021-030-004
DFAS-DE/AYADD
Agency Code 3801

Refund from: _____ (Name of Company) _____
For purchase made by the: Government of _____ (Country) _____
DSCA case _____ (Identifier) _____

Preaward Surveys

19. To verify the contractors' statements and determine their capability to perform under the contract terms, a DoD preaward survey or verification of contractor's certification such as ISO 9000, may be required as a condition of FMF approval. Preaward surveys are not normally required for U.S. firms that are selling or have recently sold the same items to DoD. Purchasing countries requesting a preaward survey will pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with DCMA.

Pricing Reviews

20. A pricing review is required prior to contract award for all sole-source procurements of \$750,000 or more. DCMA, with DCAA assistance as required, will provide field-pricing support, at the Purchaser's expense, as a condition for FMF funding of the contract. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

A. DCMA, with DCAA assistance as required, will perform price reviews, and cost analyses and technical evaluations to determine price reasonableness of offers. The Purchaser should allow at least 45 calendar days for the U.S. Government representative to perform these functions and provide the subject reports to the Purchaser.

B. The purchasing country must include a copy of the pricing review as part of the justification submitted to DSCA in support of its request to use FMF to fund a contract.

C. The purchasing country will be required to pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with DCMA.

D. On all amendments of \$750,000 or more for contracts previously approved for FMF funding the Purchaser will consult with DSCA to determine if a price review or cost analysis will be required.

E. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 2 into its requests for proposal on FMF-funded DCCs.

F. For sole source purchases of \$750,000 or more of commercially available off-the-shelf items that are sold pursuant to published catalog prices, DSCA will consider, on a case-by-case basis, the Purchaser's request for waiver of the DCMA field pricing analysis. All such requests must be accompanied by supporting documentation that demonstrates the reasonableness of the proposed price.

Contract Administration/Audit Services

21. On all contracts of \$750,000 or more (sole source or competitive awards) the purchasing country is required to contract with DCMA for contract audit services using a DCMA FMS case. At a minimum, DCMA will arrange with DCAA to monitor the contractor's performance to ensure compliance with the DSCA Contractor's Certification throughout the life of the contract. The Purchaser is required to incorporate the following contract clause into its FMF-funded DCCs of \$750,000 or more:

As a condition of FMF funding of the contract, the contractor agrees that Defense Contract Audit Agency (DCAA) contract audit services will be performed to ensure that the contractor is in compliance with the Defense Security Cooperation Agency (DSCA) Contractor's Certification and Agreement. DCAA will perform contract audit services in accordance with the contractor's certification. To ensure contractor compliance DCAA contract audit services will be provided over the life of the contract and will be coordinated with Defense Contract Management Agency.

22. The Defense Contract Management Agency (DCMA) can perform quality assurance services if required by the contract, requested by the Purchaser, or directed by DSCA.

A. The cost of DCMA quality assurance services may be provided in the contract and paid to the DFAS by the contractor on behalf of the Purchaser; however, the purchasing country is required to arrange for these services through an FMS agreement with the DCMA.

B. For some contracts or purchase orders, DSCA may require DCMA quality assurance verification before delivery to ensure that the quality of the items or services is in accordance with contract terms. If DSCA determines such quality assurance verification is required as a condition for FMF funding, DSCA will notify the Purchaser. The Purchaser is

obligated to notify the contractor. Generally, DoD quality assurance services are arranged by the Defense Contract Management Agency, International and Federal Business Team:

Defense Contract Management Agency	
ATTN: DCMA-FBFR	(703) 428-1327
6350 Walker Lane Suite 300	(703) 428-1505 (Fax)
Alexandria, VA 22310-3266	

U.S. Government Audits

23. All FMF-funded DCCs are subject to audit by the Defense Contract Audit Agency (DCAA). DCAA will perform audits, at the U.S. Government expense, to ensure contractor's compliance with these Guidelines and the requirements in the certification. DCAA may initiate audits at any time up to three years following receipt of the final payment on the contract by the contractor. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 3 into its requests for proposal on FMF-funded DCCs.

Accounting Principles

24. Contractors must comply with generally accepted accounting principles and, if a contractor otherwise contracts with DoD, the contractor must comply with the applicable cost accounting standards. FMF may be disallowed for contracts, which result in additional costs being transferred to the DoD. The DCAA has expressed concerns about the formation (by U.S. prime contractors) of separate corporate segments to conduct foreign sales. In some cases, when significant intracompany contracting is involved, the resulting allocations of costs are inconsistent with cost accounting standards and result unjustifiably in the allocation of additional costs to DoD contracts. If DoD prime contractors establish separate companies or other corporate segments for the purpose of conducting foreign sales and request FMF for sales by such segments, DSCA will request DCAA review of the transaction. FMF will be approved only upon confirmation by the DCAA that the arrangement is consistent with cost accounting standards and that there would be no unjustifiable additional cost on DoD contracts with the prime contractor.

Parties Excluded from FMF Funding

25. The Defense Logistics Agency is the executive agency for debarment and suspension proceedings.

A. FMF funding will not be approved for DCCs with U.S. companies, firms, or persons included on the U.S. General Services Administration List of Parties Excluded From Federal Procurement or Nonprocurement Programs; the U.S. Commerce List of Denial Orders Currently Affecting Export Privileges; or similar determinations in which the U.S. Department of State has made certain contractors ineligible to export material under the International Traffic in Arms Regulations (ITAR).

B. The applicable web site for the General Service Administration list is <http://epls.arnet.gov>; the Commerce List is <http://www.bxa.doc.gov/DPL>; and the State Department list is <http://www.pmdtc.org/debar059.htm>.

C. Before such contracts can be considered for FMF funding, the U.S. contractor involved must take appropriate administrative or legal steps to remove the relevant organization or individual from the debarment/suspension list. Such action should be taken directly with the agency that has debarment responsibility.

Insurance Requirements

26. Use of a U.S. insurance firm is normally required if FMF funding is used to pay this cost.

Contract Dispute /Arbitration

27. Contract dispute resolution and/or arbitration, if the contract includes an arbitration clause, must take place in either the United States or a mutually agreed third country, but not in the Purchaser country. The arbitration clause shall provide that the arbitrator(s) shall determine the matters in dispute in accordance with the commercial law of the United States or any state of the United States, as agreed by the parties and set forth in the contract, notwithstanding that the rules of private international law (choice-of-law rules) might otherwise lead to the application of some other law.

DSCA Points of Contact

28. Contracts and supporting documentation should be submitted by the purchasing country to the following address:

Defense Security Cooperation Agency
ATTN: Director, MEAN-ME-DCC
201 12th Street South, Suite 203
Arlington, VA 22202-5408

29. Inquiries concerning these policies and procedures or the contract review process should be directed to the above address or by phone to (703) 604-6630 or 601-3714.

30. A copy of these Guidelines or the Contractor's Certification and Agreement with DSCA, dated January 2005 may be downloaded from the following internet address:
<http://www.dsca.mil>

Enclosures: As stated

ENCLOSURE 1

REQUESTS FOR EXCEPTIONS

Requests for exceptions for standard DoD items and/or justification for major-unique items to be funded with U.S. FMF funds must, at a minimum, include the following:

A. Country:

B. Identification of Requirements:

- (1) U.S. Defense Items or Services (item description and NSN).
- (2) Quantity.
- (3) Estimated Purchase Agreement Value in U.S. Dollars.
- (4) Projected date of submission of contract to DSCA for funding approval.
- (5) Required delivery date.

C. Basis for requesting exception to allow FMF funding of a Direct Commercial Contract, including, but not limited to the following:

- (1) Statement as to why a DCC should be used instead of FMS.
- (2) Anticipated source of goods or services.
- (3) Documentation from MilDep or DoD component supporting FMF-DCC request.

ENCLOSURE 2

PRICING REVIEWS

1. As a condition of FMF funding of sole source contracts of \$750,000 or more, or in other circumstances where such a pricing review is required by DSCA, the contractor must agree to the requirement for field pricing review. The Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) will conduct this review. It may include a technical and cost analysis of the contractor's proposal.

2. The purchasing country shall request field-pricing support through the DCMA International and Federal Business Team (<http://www.dcms.mil/dcms-fbfr/index.htm>). Field pricing support may include a review by the cognizant contract audit activity before concluding negotiation of the contract or any modification. The contractor may be required to submit cost or pricing data in connection with pricing of this contract or any modification to this contract that affects the price of the contract.

3. The pricing review is intended to give the Purchaser a detailed analysis of the proposal for use in contract negotiations to determine a fair and reasonable price. It normally is an audit or review by the cognizant audit activity and a technical analysis by DCMA that **may** include any of the following:

a. A Price Review that is a:

- (1) Verification of cost or pricing data and evaluation of cost elements.
- (2) Evaluation of the offeror's current practices to ensure that the effects of inefficient or uneconomical past practices do not unreasonably increase the price of the contract.

b. A comparison of costs proposed by the offeror for individual cost elements with:

- (1) Actual costs previously incurred by the same offeror;
- (2) Previous cost estimates from the offeror or from other offerors for the same or similar items;
- (3) Other cost estimates received in response to the Purchaser's request;
- (4) Independent cost estimates by technical personnel;
- (5) Forecasts or planned expenditures.

c. Verification that the offeror's cost submissions are in accordance with U.S. DoD contract cost principles and procedures, generally accepted accounting principles, and the requirements and procedures of the cost accounting standards when applicable.

d. A review to determine that all cost or pricing data necessary to make the contractor's proposal accurate, complete, and current has been either submitted or identified in writing by the contractor.

e. An analysis of the results of any make-or-buy program reviews, in evaluating subcontractor costs.

4. The technical analysis should include a review and assessment of: the quantities and kinds of material proposed; the need for the number and kinds of labor hours and the labor mix; any special tooling and facilities proposed; reasonableness of proposed scrap and spoilage factors; and any other data that may be pertinent to the cost or price analysis.

5. Non-competitively awarded subcontracts meeting the \$750,000 or more threshold are subject to the same field pricing requirements as the prime contractor.

ENCLOSURE 3

U.S. GOVERNMENT AUDITS

USG representatives shall have the right to examine and audit all the contractor's books, records, documents, and other data, related to proposing, negotiating, pricing, or performing the contract, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The contractor shall make available at its office, at all reasonable times, the materials described above for examination, audit, or reproduction, until 3 years after final payment under the contract. General access to the offeror's books and financial records shall be limited to USG representatives. The USG representatives shall verbally notify the Purchaser immediately of data provided that is so deficient as to preclude review, or where the contractor has denied access to records or to cost or pricing data considered essential to the performance of a satisfactory review. This verbal notification shall be promptly confirmed in writing to the Purchaser describing the deficiency or the denial of access to data or records. A contractor's failure to provide adequate cost and pricing data may disqualify the contract from consideration for FMF approval.